Donisyah Putra bin Amry v Mohammed WA Abuali & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO WA-12ANCvC-175–11 OF 2023
SUZANA MUHAMAD SAID JC
10 MAY 2024

International Law — Conventions — Diplomatic immunity and privileges — Road accident — Motorcar driven by son of Ambassador of Palestine — Claim for damages and injury — Whether action could be instituted against son of Ambassador of Palestine — Whether Vienna Convention on Diplomatic Relations 1961 granted diplomatic agents, along with their family members immunity from civil jurisdiction — Whether Malaysian courts lacked jurisdiction over matters involving individuals who enjoyed diplomatic immunity — Whether owner of vehicle involved in accident with person enjoying diplomatic immunity could seek recourse from insurance company of person with diplomatic immunity — Whether action ought to be struck out — Diplomatic Privileges (Vienna Convention) Act 1966 arts 22, 31 & 37(1) — Consular Relations (Vienna Convention) Act 1999 s 2 — Vienna Convention on Diplomatic Relations 1961 art 37(1)

The appellant ('plaintiff') filed a claim for general and special damages against the ('respondents') defendants for injuries suffered due to an accident occurred between the plaintiff who was riding a motorcycle and the first defendant ('D1'), the son of the Ambassador of the State of Palestine to Malaysia, who was driving a motorcar. The second defendant ('D2') was the registered owner of the motorcar which was under an insurance coverage from General Insurance Malaysia Sdn Bhd. The sessions court, had granted: (a) a declaration that the sessions court was not seized with the jurisdiction over the respondents, pursuant to arts 22, 31 and 37(1) of the Diplomatic Privileges (Vienna Convention) Act 1966 ('the Act'); and (b) struck of the plaintiff's claim pursuant to O 18 r 19(1)(b) and/or (d) of the Rules of Court 2012 dan under the inherent jurisdiction of the court. The issue that arose for determination was whether the plaintiff could institute this action against the D1 and D2 as they were claiming diplomatic immunity under the Act.

Held, dismissing the appeal:

(1) It was not disputed that D1 was the son of the Ambassador of Palestine. In this context, art 37 of the Schedule of the Act ('Schedule') provides that 'the members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in arts 29 to 36 of the Schedule'.

Articles 29 to 36 of the Schedule provides that a person of a diplomatic agent shall be inviolable. Since there was no waiver under art 32 of the Schedule and as provided under s 2(2) of the Consular relations (Vienna Convention) Act 1999 ('Act 595') read together with art 45 of the Schedule under Act 595, the diplomatic immunity of D1 remained (see paras 17 & 21).

(2) According to the applicability of the diplomatic immunity under the Act and Act 595 of the Vienna Convention, it was clear that D1 was a person protected under art 37 of the Schedule as he was the son of the Ambassador of the State of Palestine, who was the head of mission for that country in Malaysia. Thus, D1 enjoyed the diplomatic immunity accorded under the law. Further, the embassy was cloaked with a diplomatic immunity, so this action could not stand as it lacked jurisdiction (see paras 34 & 39).

(3) D2 had an insurance coverage for the motorcar that was involved in the accident. Based on art 56 of Act 595, in cases involving vehicle accident, the third party, ie the plaintiff, had the right to claim to the insurance company of the registered vehicle. As such, having the right to claim to the insurance company, the plaintiff, was thus, not left without a remedy. Therefore, the plaintiff's claim was obviously unsustainable and ought to be strike out. In this regard, there was no merit in the plaintiff's appeal to warrant appellate intervention (see paras 41 & 43–44).

[Bahasa Malaysia summary

Perayu ('plaintif') memfailkan tuntutan ganti rugi am dan khas terhadap defendan ('responden') atas kecederaan yang dialaminya akibat kemalangan yang berlaku antara plaintif yang menunggang motosikal dan defendan pertama ('D1'), anak kepada Duta Besar Negara Palestin ke Malaysia, yang memandu kereta bermotor. Defendan kedua ('D2') adalah pemilik berdaftar kereta yang berada di bawah perlindungan insurans daripada Insurans Am Malaysia Sdn Bhd mahkamah sesyen, telah memberikan: (a) pengisytiharan bahawa mahkamah sesyen tidak mempunyai bidang kuasa ke atas responden, menurut s 22, 31 dan 37(1) Akta Keistimewaan Diplomatik (Konvensyen Vienna) 1966 ('Akta tersebut'); dan (b) tuntutan plaintif dibatalkan menurut A 18 k 19(1)(b) dan/atau (d) Kaedah-kaedah Mahkamah 2012 dan di bawah bidang kuasa mahkamah sedia ada. Isu yang timbul untuk penentuan ialah sama ada plaintif boleh memulakan tindakan ini terhadap D1 dan D2 kerana mereka menuntut imuniti diplomatik di bawah Akta tersebut.

Diputuskan, menolak rayuan:

(1) Tidak dipertikaikan bahawa D1 adalah anak kepada duta besar Palestin. Dalam konteks ini, perkara 37 Jadual di dalam Akta tersebut ('Jadual tersebut') memperuntukkan bahawa 'ahli keluarga ejen diplomatik yang

membentuk sebahagian daripada isi rumahnya hendaklah, sekiranya mereka bukan warganegara Negara penerima, menikmati keistimewaan dan kekebalan yang dinyatakan dalam perkara 29 hingga 36 Jadual tersebut'. Perkara 29 hingga 36 Jadual memperuntukkan bahawa seseorang ejen diplomatik mempunyai kekebalan. Oleh kerana tiada pengecualian di bawah perkara 32 Jadual dan seperti yang diperuntukkan di bawah s 2(2) Akta Hubungan Konsular (Konvensyen Vienna) 1999 ('Akta 595') yang dibaca bersama dengan perkara 45 Jadual tersebut di bawah Akta 595, kekebalan diplomatik D1 adalah kekal (lihat perenggan 17 & 21).

(2) Penggunaan kekebalan diplomatik di bawah Akta tersebut dan Akta 595 Konvensyen Vienna, adalah jelas bahawa D1 adalah orang yang dilindungi di bawah perkara 37 Jadual tersebut kerana dia merupakan anak kepada Duta Besar Negara Palestin, yang merupakan ketua misi untuk negara itu di Malaysia. Oleh itu, D1 menikmati kekebalan diplomatik yang diberikan di bawah undang-undang. Selanjutnya, seluruh kedutaan itu mempunyai kekebalan diplomatik, jadi tindakan ini tidak boleh dipertahankan kerana tidak mempunyai bidang kuasa (lihat perenggan 34 & 39).

(3) D2 mempunyai perlindungan insurans untuk kereta yang terlibat dalam kemalangan itu. Berdasarkan perkara 56 Akta 595, dalam kes yang melibatkan kemalangan kenderaan, pihak ketiga, iaitu plaintif, mempunyai hak untuk menuntut kepada syarikat insurans kenderaan berdaftar. Oleh itu, beliau mempunyai hak untuk menuntut kepada syarikat insurans, plaintif, dan tidak dibiarkan tanpa remedi. Oleh itu, tuntutan plaintif jelas tidak boleh dipertahankan dan harus dibatalkan. Dalam hal ini, tiada merit dalam rayuan plaintif untuk mewajarkan campur tangan rayuan ini (lihat perenggan 41 & 43–44).]

Cases referred to

Embassy of Finland v Cosworth Management Services (M) Sdn Bhd [2005] 7 MLJ 73, HC (refd)

Krajina v the Tass Agency and Another [1949] 2 All ER 274, CA (refd)

MMC Oil & Gas Engineering Sdn Bhd v Tan Bock Kwee & Sons Sdn Bhd [2016] 2 MLJ 428; [2016] 3 MLRA 144; [2016] 4 CLJ 665, CA (refd)

Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67; [2020] 6 MLRA 193, FC (refd)

Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors [2021] 3 MLJ 622; [2021] 4 MLRA 211; [2021] 4 CLJ 821, FC (refd)

Subramaniam a/l Letchimanan v The United States of America and another appeal [2021] 5 MLJ 612; [2021] 4 MLRA 153; [2021] 3 ILR 369; [2021] 7 CLJ 371, CA (distd)

Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and

another appeal [2018] 2 MLJ 177; [2018] 1 MLRA 263; [2018] 2 CLJ 641, FC (refd)

Legislation referred to

Consular Relations (Vienna Convention) Act 1999 ss 2, 2(2), 4, Schedule, arts 29, 30, 31, 32, 33, 34, 35, 36, 37, 43, 45, 53, 56

Diplomatic Privileges (Vienna Convention) Act 1961 ss 3, 3(1), (4), (5), 5, Schedule

Ministerial Functions Act 1969 s 2

Sri Dev Nair (Kaiser & Co) for the appellant.

Shanta Mohan (Thanessha Gunalan) (Chambers of Shanta Mohan) for the respondents.

Suzana Muhamad Said JC:

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the learned sessions court judge in allowing the respondents' application for granting the following orders:

(a) Suatu deklarasi bahawa Mahkamah tidak mempunyai bidang kuasa ke atas defendan pertama dan defendan kedua berkenaan tuntutan kemalangan jalanraya plaintif dalam tindakan ini, menurut Artikel 22, 31 dan 37(1) 'Diplomatic Privileges (Vienna Convention) Act 1966' (Akta 636) dan Artikel 37(1) 'Vienna Convention on Diplomatic Relations 1961'.

(b) Writ Saman dan Pernyataan Tuntutan Pihak Plaintif bertarikh 3/04/2023 dibatalkan di bawah Aturan 18 Kaedah 19(1)(b) dan/atau (d) Kaedah-Kaedah Mahkamah 2012 dan/atau di bawah bidang kuasa sedia ada ('inherent jurisdiction') Mahkamah.

(c) Kos RM 1,000.00.

[2] This court dismissed the appeal with cost of RM3,000 subject to the allocator's fee. The reasons are as deliberated.

[3] For ease of reference, the respective parties shall be referred to as the plaintiff and defendant as they were in the sessions court.

CASE BACKGROUND

[4] The plaintiff filed a claim for general and special damages against the defendants for injuries suffered due to an accident occurred between the plaintiff who was riding a motorcycle with registration number VBN 2594 and

the first defendant ('D1') who was driving a motorcar bearing registration number 61–101 DC.

[5] The second defendant ('D2') is the registered owner of the motorcar with registration number 61–101 DC which is under an insurance coverage from General Insurance Malaysia Sdn Bhd.

[6] D1 was issued with a traffic summons and paid a fine of RM300.

[7] It was not disputed that D1 is the son of the Ambassador of the State of Palestine to Malaysia.

THE ISSUE

[8] This court finds that the main issue is whether the plaintiff can institute this action against the defendants as the defendants are claiming diplomatic immunity under the Diplomatic Privileges (Vienna Convention) Act ('Act 636') and consequently, the court lacks jurisdiction.

FINDINGS AND ANALYSIS

Diplomatic Relations (Vienna Convention) Act 1966 (Act 636)

[9] The Diplomatic Privileges (Vienna Convention) Act ('Act 636') is 'An Act to amend the law on diplomatic privileges and immunities by giving effect to the Vienna Convention on Diplomatic Relations (signed in 1961) and for other matters connected therewith'.

[10] The Vienna Convention has been adopted and passed in the Parliament of Malaysia and enforced, thus, has effectively become the law of Malaysia.

[11] The Vienna Convention is applicable in Malaysia under Act 636 as provided under s 3(1), (4) and (5):

> 3 Application of Vienna Convention
>
> (1) Subject to section 4, the Articles set out in the Schedule (being Articles of the Vienna Convention on Diplomatic Relations signed in 1961) shall have the force of law in Malaysia and shall for that purpose be construed in accordance with the following provisions of this section.
>
> ...
>
> (4) Articles 35, 36 and 40 shall be construed as granting any privilege or immunity which they require to be granted.
>
> (5) The references in Articles 37 and 38 to the extent to which any privileges and immunities are admitted by the receiving State and to the additional privileges and

immunities that may be granted by the receiving State shall be construed as referring respectively to the extent to which any privileges and immunities may be specified by the Yang di-Pertuan Agong by order published in the Gazette and to any additional privileges and immunities that may be so specified.

[12] For ease of reference, s 4 provides:

4 Restriction of privileges and immunities

(1) If it appears to the Yang di-Pertuan Agong that the privileges and immunities accorded to a mission of Malaysia in the territory of any State, or to persons connected with that mission, are less than those conferred by this Act on the mission of that State or on persons connected with that mission, the Yang di-Pertuan Agong may by an order published in the Gazette withdraw such of the privileges and immunities so conferred from the mission of that State or from such persons connected with it as appears to him to be proper.

(2) ...

[13] Accordingly, the Articles of the Vienna Convention are incorporated in the Schedule of the Diplomatic Privileges (Vienna Convention) of Act 636 (Schedule) as provided under s 3.

Consular Relations (Vienna Convention) Act 1999 (Act 595)

[14] Section 2 of the Consular Relations (Vienna Convention) Act 1999 ('Act 595') provides for the application of the Vienna Convention in Malaysia:

2 Application of Vienna Convention

(1) Subject to section 4, the Articles set out in the Schedule (being Articles of the Vienna Convention on Consular Relations signed in 1963) shall have the force of law in Malaysia and for that purpose be construed in accordance with the following provisions of this section.

[15] Further, s 4 of Act 595 provides:

4 Application of Act

This Act shall apply —

(a) to any State which is a party to the 1963 Convention;

(b) to such extent and with such modifications as the Yang di-Pertuan Agong may deem necessary, to any State, not being a State which is a party to the 1963 Convention, as he may by order published in the Gazette declare to be a State to which this Act shall apply, being a State with which a consular convention providing for matters for which provision is made in this Act has been concluded by or on behalf of Malaysia; and

(c) to such extent and with such modifications as the Yang di-Pertuan Agong may deem necessary, to such body or political entity as he may by order published in the Gazette specify.

[16] As such, in terms of application of the Vienna Convention, both Act 636 and Act 595 have been adopted and become the law of Malaysia as passed in Parliament and enforced. Hence, there is no ambiguity as to whether the domestic law or the international law, would prevail. In fact, this is a non-issue at all.

Diplomatic immunity of D1 as son of the Ambassador

[17] It was not disputed that D1 is the son of the Ambassador of Palestine. In this context, the relevant provision on diplomatic immunity pertaining to D1, is art 37 of the Schedule that provides:

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

[18] Generally, arts 29 to 36 of the Schedule provide that a person of a diplomatic agent shall be inviolable. These articles relate to the privileges enjoyed by persons of a diplomatic agent under art 37 including that the person shall not be liable to any form of arrest or detention, enjoyment and protection of the person's private residence, freedom of communication, tax exemptions including customs duties, and related charges and all taxes personal or real, national, regional or municipal, except as provided under art 34, exemptions on social service provisions, public service and military obligations.

[19] It is relevant to peruse art 31 of the Schedule which provides for the enjoyment of immunity from criminal, civil and administrative jurisdiction. Looking at the exceptions in paras 1(a), (b) and (c), this court observed that none of the exceptions is applicable to D1. Article 31 states:

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of —

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs(a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

[20] The plaintiff questioned the diplomatic immunity of D1. Notably, art 32 of the Schedule provides that the immunity of the diplomatic agents and persons enjoying the immunity, may be waived and the waiver must always be express.

[21] Therefore, in this context, this court is of the opinion that since there is no waiver under art 32 of the Schedule and as provided under s 2(2) of Act 595 read together with art 45 of the Schedule under Act 595, the diplomatic immunity of D1 remains.

[22] It is also important to refer to art 53 of Act 595 which deals with the beginning and starting of consular privileges and immunities and is also applicable to family members of the consular. It says:

ARTICLE 53

Beginning and end of consular privileges and immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

[23] The plaintiff had also contended that there should be a certificate issued under s 5 of Act 636 as to whether D1 is entitled to any privilege or immunity. Section 5 provides:

Evidence

5. If in any proceedings any question arises whether or not any person is entitled to any privilege or immunity under this Act, a certificate issued by or under the authority of the Minister stating any fact relating to that question shall be conclusive evidence of that fact.

[24] This court finds that s 5 is only applicable if question arises as to whether a person is entitled to any privilege or immunity. However, in this suit, the identity of D1 is unambiguous. The fact remains that he is the son of the Ambassador of the State of Palestine and this fact was never disputed by the plaintiff at any time. In fact, the plaintiff averred that D1 is the son of the Ambassador of the State of Palestine.

[25] At this juncture, it is not about whether there is in existence of a certificate or not, but whether the son is actually the son of the Ambassador, and if he is, then he is protected under the Vienna Convention and it is obviously not disputed that he is the son of the Ambassador.

[26] This court is of the opinion that a certificate under s 5 is not necessary as it is obvious and not questionable as to the identity of D1. It was never disputed that he is a family member of the Ambassador, the son and as such is protected under Act 636 and Act 595 respectively.

[27] Be as it may, if, otherwise a certificate is required, and as 'a certificate' is not defined in Act 636, this court finds that the diplomatic immunity document from the Ministry of Foreign Affairs of Malaysia dated 7 June 2023 is sufficient as s 5 clearly states that 'a certificate issued by or under the authority of the Minister' and this document was indeed issued by the Ministry of Foreign Affairs of Malaysia.

[28] Obviously, the Ministry of Foreign Affairs of Malaysia is under the portfolio of the Minister of Foreign Affairs, as accorded under s 2 of the Ministerial Functions Act 1969 ('Act 2') particularly an Order under Act 2 (for example the Ministers Of The Federal Government Order 2023 Act 2 — Ministerial Functions Act 1969 gazetted under PU (A) 27/2023). Additionally, it is also provided under s 3 of Act 595 that Minister 'means the Minister charged with the responsibility for foreign affairs ...'.

[29] For easy reference, the diplomatic immunity document from the Ministry of Foreign Affairs of Malaysia dated 7 June 2023 is as reproduced:

GB 8/2023

The Ministry of Foreign Affairs of Malaysia presents its compliments to the Embassy of the State of Palestine in Kuala Lumpur and has the honour to refer to

the latter's Diplomatic Note No NV/NF/WP/098/2023 dated 9 May 2023 pertaining to the request for this Ministry to issue a diplomatic immunity document for Mr. Mohammed WA Abuali, the son of His Excellency Walid Abu Ali, the Ambassador of the State of Palestine to Malaysia for the purpose of the case before the Kuala Lumpur Sessions Court No WA-A53KJ-147–04/2023.

The Ministry wishes to confirm that a Diplomatic Identification Card bearing serial number D0491/18 has been issued to Mr Mohammed WA Abuali on 24 May 2023 who is listed as a registered family member of His Excellency Walid Abu Ali.

As the bearer of the Diplomatic Identification Card, Mr Mohammed WA Abuali enjoys the privileges and immunities that are accorded to the members of the family of a diplomatic agent on the basis of Article 37(1) of the Vienna Convention on Diplomatic Relations 1961 (VCDR) as well as the Schedule of the Diplomatic Privileges (Vienna Convention) Act 1966 [Act 636] which provides that, 'the members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36'.

Pursuant to Article 31 of the VCDR and the Schedule of Act 636, the members of the family of a diplomatic agent shall enjoy immunity from its civil and administrative jurisdiction of the receiving State. Hence, Mr Mohammed WA Abuali is covered by this protection.

Notwithstanding the above, as the Embassy of the State of Palestine in Kuala Lumpur is aware, Article 41(1) of the VCDR however, cautiously states that:

Article 41

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

Based on the above provision, members of diplomatic missions and their family members are expected to respect the laws and regulations of Malaysia at all times. Cognizant of the importance of respecting the laws, the Ministry would not hesitate to request for the waiver of immunity from the sending states should there is any violation of the Malaysian laws involving the foreign diplomatic agents and their dependents in Malaysia.

The Ministry of Foreign Affairs of Malaysia avails itself of this opportunity to renew to the Embassy of the State of Palestine in Kuala Lumpur, the assurance of its highest consideration.

[30] This diplomatic immunity document served as 'a certificate' provided under s 5 of Act 636, clearly affirmed the position of D1 and the privileges and immunities he enjoys as the son of the Ambassador of the State of Palestine.

[31] In this regard, the plaintiff relied heavily on the case of *Subramaniam a/l Letchimanan v The United States of America and another appeal* [2021] 5 MLJ 612; [2021] 4 MLRA 153; [2021] 3 ILR 369; [2021] 7 CLJ 371. However, this court finds that, *Subramaniam* can be distinguished from this instant case.

It is evident from the facts that in *Subramaniam*, it involved an employee of the embassy, whereas in this case, a family member or rather the son of the Ambassador.

[32] This court also observed that art 43 of Act 595 provides for immunity of jurisdiction of consular officers and employees and its exceptions. Article 43 provides:

> ARTICLE 43
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> Immunity from jurisdiction
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> 1. *Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.*
>
> 2. *Paragraph 1 of this Article shall not, however, apply in respect of a civil action* either:
>
> (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
>
> (b) *by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.* (Emphasis added.)

[33] The exceptions to art 43 para 1 would have been applicable to D1, if, D1 is the officer of the consular or its employee but he is not. D1 is not an officer nor an employee but a family member of the Ambassador.

[34] Accordingly, from the above provisions and applicability of the diplomatic immunity under Act 636 and Act 595 of the Vienna Convention as well the diplomatic immunity document form the Ministry of Foreign Affairs of Malaysia dated 7 June 2023, it is clear that D1 is a person protected under art 37 of the Schedule as he is the son of the Ambassador of the State of Palestine, who is the head of mission for that country in Malaysia. Thus, D1 enjoys the diplomatic immunity accorded under the law.

Diplomatic immunity of D2 as the embassy of the State of Palestine

[35] In *Embassy of Finland v Cosworth Management Services (M) Sdn Bhd* [2005] 7 MLJ 73, Justice Abdul Wahab Patail defines the legal character of an embassy as:

> 12 Generally, an embassy is a deputation or mission by a country to a foreign country and is derived from the fact that such deputation or mission is led by the Ambassador. Though the term 'embassy' is also used to describe the residence and offices of an Ambassador, the term is also used to collectively describe the Ambassador and the staff that supports him: see *Oxford Advance Learner's*

Dictionary of Current English (5th Ed). Thus, in my view the embassy cannot be separated from the Ambassador and derives its juridical existence from the Ambassador.

[36] The issue of legal character of an Embassy was similarly decided by the Court of Appeal in the case of *Krajina v the Tass Agency and Another* [1949] 2 All ER 274. The court held that, having regard to the certificate of the Ambassador that the Tass Agency was a department of the Soviet State, Tass Agency of Moscow has established that it is part and parcel of a sovereign independent state, namely, the Union of Soviet Socialist Republics.

[37] In acknowledging the legal capacity of an embassy, the court in *Embassy of Finland v Cosworth Management Services (M) Sdn Bhd* [2005] 7 MLJ 73 deliberated that the embassy of Finland is authorised to represent the Government of Finland and held:

... [12] The Ministry of Foreign Affairs of Finland hereby states, that the Embassy of Finland in Kuala Lumpur is authorised to represent the Government of Finland as the above mentioned case (encl 23).

That the Ministry of Foreign Affairs of Finland hereby states that the Embassy of Finland in Kuala Lumpur is authorised to represent the Republic of Finland in instituting and reinstating legal proceedings against Cosworth Management Services (M) Sdn Bhd pursuant to a Tenancy Agreement dated 14 December 1989 between the Embassy of Finland and Cosworth Management Services (M) Sdn Bhd (encl 24).

[38] Thus, as an identity that possess legal character, D2 is entitled to sue and be sued.

[39] However, in this action, the embassy is cloaked with a diplomatic immunity, so this action cannot stand as it lacks jurisdiction and ought to be dismissed accordingly.

[40] This court further refers to art 56 of the Schedule of Act 595 which provides for compliance to get insurance against third party risks arising from the use of vehicles. It reads:

ARTICLE 56

Insurance against third party risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

[41] It was not disputed that D2 has an insurance coverage for the motorcar that was involved in the accident. Based on art 56, in cases involving vehicle

accident, the third party, as in this case, the plaintiff, has the right to claim to the insurance company of the registered vehicle. As such, having the right to claim to the insurance company, the plaintiff, is thus, not left without a remedy.

[42] Furthermore, it was also not disputed that the plaintiff has been compensated personally by the defendants of which the plaintiff admitted of receiving the same.

[43] Based on the above findings and on balance of probabilities, this court finds that the defendants have succeeded to prove that they are protected under Act 636 and 595 of which the plaintiff has failed to refute. The plaintiff's claim is obviously unsustainable and ought to be strike out.

CONCLUSION

[44] In this regard, for all the reasons aforesaid, this court finds that there is no merit in the plaintiff's appeal to warrant appellate intervention (see: *Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors* [2021] 3 MLJ 622; [2021] 4 MLRA 211; [2021] 4 CLJ 821 (FC), *Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal* [2018] 2 MLJ 177; [2018] 1 MLRA 263; [2018] 2 CLJ 641 (FC), *Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors* [2020] 12 MLJ 67; [2020] 6 MLRA 193 and *MMC Oil & Gas Engineering Sdn Bhd v Tan Bock Kwee & Sons Sdn Bhd* [2016] 2 MLJ 428; [2016] 3 MLRA 144; [2016] 4 CLJ 665).

[45] Therefore, after careful scrutiny and judicious consideration of all the evidence before this court, including the written and oral submissions of both parties, this court dismissed the appeal with cost.

Appeal dismissed.

Reported by K Selvaraju